

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sophia Manuel	Team: Squad #16	CCRB Case #: 201406706	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 07/03/2014 2:40 AM	Location of Incident: 1750 Sedgwick Avenue	Precinct: 46	18 Mo. SOL 1/3/2016	EO SOL 1/3/2016	
Date/Time CV Reported Mon, 07/07/2014 8:34 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 07/07/2014 8:34 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Tatiana Cruz	00400	950253	046 PCT
2. POM Daniel Madden	07841	950796	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Tatiana Cruz	Discourtesy: PO Tatiana Cruz spoke rudely to § 87(2)(b) and § 87(2)(b)	
B.POF Tatiana Cruz	Abuse: PO Tatiana Cruz arrested § 87(2)(b)	
C.POF Tatiana Cruz	Abuse: PO Tatiana Cruz arrested § 87(2)(b)	
D.POF Tatiana Cruz	Force: PO Tatiana Cruz used physical force against § 87(2)(b)	
E.POM Daniel Madden	Force: PO Daniel Madden used physical force against § 87(2)(b)	
F.POF Tatiana Cruz	Force: PO Tatiana Cruz struck § 87(2)(b) with her handcuffs.	
G.POF Tatiana Cruz	Force: PO Tatiana Cruz struck § 87(2)(b) with an asp.	
H.POF Tatiana Cruz	Abuse: PO Tatiana Cruz searched § 87(2)(b) cell phone.	
I.POF Tatiana Cruz	Force: PO Tatiana Cruz used a chokehold against § 87(2)(b)	
J.POF Tatiana Cruz	Force: PO Tatiana Cruz used pepper spray against § 87(2)(b) and § 87(2)(b)	

## Case Summary

On July 3, 2014, at approximately 2:40 a.m., PO Tatiana Cruz and PO Daniel Madden of the 46<sup>th</sup> Precinct pulled over § 87(2)(b) and § 87(2)(b) in front of 1750 Sedgwick Avenue in the Bronx because § 87(2)(b) was allegedly driving without a seatbelt. PO Cruz allegedly spoke rudely to § 87(2)(b) and § 87(2)(b) (**Allegation A**). PO Cruz and PO Madden allegedly observed a gravity knife in the car. PO Cruz decided to arrest § 87(2)(b) and § 87(2)(b) for § 87(2)(b) knife (**Allegations B and C**). PO Cruz removed § 87(2)(b) from his car and frisked and searched him. PO Cruz bit § 87(2)(b)'s right arm because he allegedly tugged at her firearm (**Allegation D**). PO Madden punched § 87(2)(b) (**Allegation E**). PO Cruz allegedly struck § 87(2)(b) with handcuffs (**Allegation F**). § 87(2)(b) exited the car and videotaped the officers. The officers handcuffed § 87(2)(b) and placed him in the police van. PO Cruz allegedly struck § 87(2)(b)'s left wrist with an asp, breaking his watch. She also allegedly struck him about the body with her asp (**Allegation G**). PO Cruz allegedly took § 87(2)(b)'s phone and deleted the video (**Allegation H**). § 87(2)(b) complied with instructions to get on the ground, where PO Cruz handcuffed him. She then allegedly picked him up by his sweatshirt, choking him, before placing him in the van (**Allegation I**). PO Cruz pepper sprayed § 87(2)(b) and § 87(2)(b) in the van (**Allegation J**). They were transported to the 46<sup>th</sup> Precinct stationhouse, where they were each released with a desk appearance ticket for criminal possession of a weapon in the fourth degree. § 87(2)(b) also received a summons for a seatbelt violation (arrest reports encl. 49-54; summons encl. 15; complaint encl. 6-8). A witness, § 87(2)(b) provided a video which is extremely dark and distant and which does not capture any sounds or images of the incident. § 87(2)(b) and § 87(2)(b) visited § 87(2)(b), where they were treated for bruising, swelling, concussion, and pepper spray exposure (encl. Privileged Folder).

This case was originally assigned to Inv. Alexander Schiavo. It was reassigned to Inv. Cassandra Fenkel on November 18, 2014, after Inv. Schiavo was promoted to Assistant Supervisor of Investigations. The case was reassigned to Inv. Benjamin Gilmore on December 29, 2014. After Inv. Gilmore was promoted to APU Investigator, the case was reassigned to Inv. Sophia Manuel on March 13, 2015.

## Mediation, Civil and Criminal Histories

This case was not eligible for mediation. § 87(2)(b) and § 87(2)(b) did not file a Notice of Claim regarding this incident (encl. 64). § 87(2)(b), § 86(1)(3)&(4), § 87(2)(c)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(c) [REDACTED]

## Civilian and Officer CCRB Histories

- PO Cruz has been a member of the NYPD for three years and has been the subject of seven allegations in two prior CCRB cases. In case 201206579, a vehicle search allegation was

substantiated. The NYPD issued instructions. § 87(2)(g)

- In case 201205833, an allegation that she punched someone in the face was unsubstantiated.
- In case 201206579, an allegation that she pushed someone was unsubstantiated.
- In case 201405983, an allegation was made that she struck an individual with a baton and punched the individual. The investigation is ongoing.
- PO Madden has been a member of the NYPD for three years and has been the subject of five allegations in two prior CCRB cases. § 87(2)(g)
- This is the first CCRB case involving § 87(2)(b) or § 87(2)(b) (encl. 4-5).

#### Potential Issues

§ 87(2)(b) a § 87(2)(b) who witnessed the incident, provided a brief phone statement, but did not cooperate in providing a sworn statement.

#### Findings and Recommendations

##### Allegations Not Pleaded

- § 87(2)(g)
- § 87(2)(g)
- **Property damage:** § 87(2)(b) alleged that PO Cruz broke his watch when she struck him with an asp. The property damage allegation is subsumed in the force allegation.

##### Allegation A – Discourtesy: PO Tatiana Cruz spoke rudely to § 87(2)(b) and

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) alleged that PO Cruz said, “Get on the ground, lowlife” and told him and § 87(2)(b) to “shut up” several times (encl. 10-17). § 87(2)(b) alleged that PO Cruz said to § 87(2)(b) “Keep your hands where I can fucking see them,” and called him a “smart ass” and a “fucking lowlife.” After placing § 87(2)(b) and § 87(2)(b) in the police van, § 87(2)(b) asked why he was being arrested, and PO Cruz replied, “You fucking lowlife. I don’t have to answer shit to you...I don’t have to listen to this shit. Shut the fuck up” (encl. 18-24).

PO Cruz denied calling § 87(2)(b) or § 87(2)(b) a “lowlife” and did not recall using profanity (encl. 33-40c). PO Madden did not hear PO Cruz use profanity or speak discourteously to § 87(2)(b) or § 87(2)(b) (encl. 41-47). § 87(2)(b) and § 87(2)(b) did not allege that the officers used discourteous language but do not appear to have been in a position to hear any conversation between the civilians and officers (encl. 27-31a).

§ 87(2)(g)

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**Allegation D – Force: PO Tatiana Cruz used physical force against § 87(2)(b)**

**Allegation E – Force: PO Daniel Madden used physical force against § 87(2)(b)**

**Allegation F – Force: PO Tatiana Cruz struck § 87(2)(b) with her handcuffs.**

It is undisputed that PO Cruz bit § 87(2)(b) and that PO Madden punched § 87(2)(b) while he resisted arrest. § 87(2)(g)

§ 87(2)(b) testified that PO Cruz pulled him out of the car, frisked and searched him, and then pulled his right hand behind his back. § 87(2)(b) pulled away and asked why he was being arrested. PO Cruz then grabbed his arm a second time and tried to handcuff him, but he pulled his arm away. PO Cruz said, “I don’t have to tell you shit. Get up against the car and put your hands behind your back.” After § 87(2)(b) pulled his hands away again, PO Cruz bit the back of § 87(2)(b)’s right arm, leaving a red mark but not breaking the skin. PO Madden then punched § 87(2)(b) in the left ribcage, side, and back multiple times. PO Cruz struck § 87(2)(b) in the head about four times with her handcuffs. § 87(2)(b) turned around and PO Madden punched his right cheekbone. Stunned by the punch, § 87(2)(b) allowed the officers to handcuff him (encl. 18-24).

§ 87(2)(b) said that PO Cruz grabbed § 87(2)(b)’s hands to handcuff him. § 87(2)(b) pulled his arms down to his side and asked why he was being arrested. PO Cruz said, “Shut up. I don’t have to tell you anything,” and told him to put his hands behind his back. § 87(2)(b) screamed, “Why are you punching me?” § 87(2)(b) later told § 87(2)(b) that PO Cruz punched his head with handcuffs. PO Madden walked towards them and punched § 87(2)(b) but § 87(2)(b) did not know how many times (encl. 10-17).

§ 87(2)(b) who watched the incident from the § 87(2)(b) of a building, did not allege that any officer punched or bit § 87(2)(b) or hit him with handcuffs. § 87(2)(b) watched the incident through a single set of windows and said he had a clear view of the entire incident. However, he denied seeing either officer use any physical force against § 87(2)(b) the first person who was arrested and who § 87(2)(b) mistakenly thought was the driver. § 87(2)(b) appeared to comply with being handcuffed. § 87(2)(b) said that the only physical force in the incident was PO Cruz striking § 87(2)(b) with a baton (encl. 26-31a).

PO Cruz said she grabbed § 87(2)(b)’s right hand and pulled it behind his back. § 87(2)(b) pulled his hand away. PO Cruz continued to attempt to handcuff him but § 87(2)(b) continued to pull his hands away. During the struggle, PO Cruz felt § 87(2)(b) tug at the butt of her gun. She did not know what he was doing or whether this action was accidental. She had her hands on her gun, as well as on § 87(2)(b)’s hand. She wanted to remove § 87(2)(b)’s hand from her gun without letting go of his hand or her gun, so she bit § 87(2)(b)’s arm. He let go. § 87(2)(b) continued to move around and PO Madden punched § 87(2)(b) but PO Cruz was not sure where or how many times. They handcuffed § 87(2)(b). PO Cruz denied striking § 87(2)(b) with handcuffs (encl. 33-40c).

PO Madden said he tried to assist PO Cruz. § 87(2)(b) pulled his arms away, tensed his body, and flung his elbows backwards, towards the officers. PO Madden told him to stop resisting but he refused. PO Madden punched § 87(2)(b) once on the side of his head. § 87(2)(b) said,

“Why did you hit me? You didn’t have to do that. That’s fucked up.” He put his hands behind his back and was handcuffed. PO Madden did not see PO Cruz use any physical force to overcome § 87(2)(b)’s resistance (encl. 41-47).

§ 87(2)(b) complained to hospital staff that officers bit him, tightly handcuffed him, struck him in the face with handcuffs, and punched him in the chest. He was diagnosed with post-concussion syndrome, two hematomas to the back right head, abrasions to his left hand, and a bruise on his upper right arm. No injuries were noted to his chest, back, ribcage, side, or face (encl. Privileged Folder).

Only the minimum amount of force necessary to overcome resistance may be used to effect an arrest. Patrol Guide Procedure 203-11 (encl. A-B).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation G – Force: PO Tatiana Cruz struck § 87(2)(b) with an asp.**

It is undisputed that PO Cruz struck § 87(2)(b) with an asp as he walked towards her with his hands up.

§ 87(2)(b) testified that when § 87(2)(b) began complaining that the officers were punching him, § 87(2)(b) exited his car and videotaped the officers on his cell phone (he alleged that PO Cruz later deleted the footage). He never got closer than five feet from the officers. After they handcuffed § 87(2)(b) and placed him in the van, PO Cruz struck § 87(2)(b)’s left wrist with an asp, breaking his watch. She took his phone and deleted his video. He complained that her actions were illegal. She struck his chest, left arm, and body with the asp, though § 87(2)(b) stated that he never stood in a fighting stance or made fists. PO Cruz then told him to get on the ground, and he complied (encl. 10-17).

§ 87(2)(b) saw § 87(2)(b) on the ground, but did not see how he got to the ground. PO Cruz struck § 87(2)(b) with her asp three or four times while he was on the ground (encl. 18-24). § 87(2)(b) said that from the § 87(2)(b) of his building, he saw PO Cruz pull § 87(2)(b) out of the

car and strike him with her asp approximately twenty times until he fell to the ground. § 87(2)(b) then exited the car and appeared to be holding his phone out in front of him. After § 87(2)(b) was handcuffed and placed in the van, PO Cruz turned her attention towards § 87(2)(b). She tried to take his phone, but he backed away. She jumped on him and threw his phone to the ground. Then she hit him with her asp, from his head down to his knees, about twenty times, until he fell to the ground (encl. 27-30). § 87(2)(b) saw § 87(2)(b) exit the car and walk towards § 87(2)(b) and PO Cruz while holding an object out in front of him. § 87(2)(b) could not see what the object was, but he assumed that it was a cell phone and that § 87(2)(b) was attempting to film the incident based on the way § 87(2)(b) was holding the object. PO Cruz struck § 87(2)(b)'s arms and legs with a baton, causing § 87(2)(b) to fall to the ground (encl. 31-31a).

PO Cruz testified that § 87(2)(b) exited his car and walked quickly towards her with his hands up in an aggressive “fighting stance.” She did not recall what position his hands were in or whether he made fists. She did not recall if he was holding a cell phone. She told § 87(2)(b) three times to get back into his car, but he continued to walk towards her with his hands up. She was concerned he may have taken the gravity knife out of the car, though she did not see it. She took out her asp and struck § 87(2)(b)'s forearm twice. She then told him to get on the ground, he complied, and she handcuffed him (encl. 33-40c).

PO Madden saw § 87(2)(b) walking from the driver side of his car from the passenger side, but did not recall seeing him holding a cell phone. PO Madden turned his attention towards § 87(2)(b) and placed him in the van. When he returned, § 87(2)(b) was lying on his stomach (encl. 41-47).

§ 87(2)(b) told medical personnel that an officer struck his left arm and back with a baton. § 87(2)(b) records noted a large contusion to his left forearm, an abrasion to his left wrist, and contusions to his left mid back and left lower back (encl. Privileged Folder).

Only the minimum amount of force necessary to overcome resistance may be used to effect an arrest. Patrol Guide Procedure 203-11 (encl. A-B).

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**Allegation H – Abuse of Authority: PO Tatiana Cruz searched § 87(2)(b)'s cell phone.**

§ 87(2)(g).

§ 87(2)(b) alleged that after PO Cruz struck him with the asp the first few times, she took his cell phone and deleted the video (encl. 10-18).

§ 87(2)(b) saw PO Cruz take the phone out of § 87(2)(b)'s hand. The next thing he saw was § 87(2)(b) lying on the ground (encl. 19-24). § 87(2)(b) saw that § 87(2)(b) was recording with his cell phone because of the way he extended his arms out in front of him. PO Cruz grabbed

the phone, and threw it on the ground (encl. 26-30). § 87(2)(b) also saw § 87(2)(b) holding an object as though it was a cell phone with which he was recording the incident. PO Cruz hit him with an asp until he dropped the phone (encl. 31).

PO Cruz did not recall seeing a phone and denied deleting any video (encl. 33-40c). PO Madden did not recall seeing a phone and did not see PO Cruz take § 87(2)(b)'s phone (encl. 41-47).

The 46<sup>th</sup> Precinct only provided a property voucher for the knife, not for § 87(2)(b)'s personal property. PO Cruz wrote in her memo book that § 87(2)(b)'s property consisted of \$305, while § 87(2)(b) had one set of keys (encl. 33-35; 54a-b).

§ 87(2)(g)

**Allegation I – Force: PO Tatiana Cruz used a chokehold against § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(b) testified that after PO Cruz handcuffed him on the ground, she picked him up by his sweatshirt, which restricted his breathing for 15 to 30 seconds (encl. 10-18).

§ 87(2)(b) did not see § 87(2)(b) being lifted up from the ground (encl. 19-24). § 87(2)(b) did not allege that PO Cruz lifted § 87(2)(b) by his sweatshirt (encl. 31-31a). § 87(2)(b) testified that PO Madden and PO Cruz lifted § 87(2)(b) by his arms (encl. 26-30).

PO Cruz said she handcuffed § 87(2)(b) on the ground, rolled him over to his back, and helped him stand up. She did not recall exactly how she helped him up, but she denied doing anything that would have restricted his breathing, such as pulling him by his shirt (encl. 33-40c).

PO Madden said he lifted § 87(2)(b) off the ground, but did not recall how he did it. He denied lifting § 87(2)(b) by his sweatshirt or seeing PO Cruz do so. He denied doing anything to restrict § 87(2)(b)'s breathing (encl. 41-47).

§ 87(2)(b)'s medical records do not mention any injuries or complaints relating to a restriction of breathing. He denied experiencing neck pain or loss of consciousness (encl. Privileged Folder).

§ 87(2)(g)

**Allegation J – Force: PO Tatiana Cruz used pepper spray against § 87(2)(b) and**

§ 87(2)(b)

It is undisputed that PO Cruz pepper sprayed § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) testified that while he and § 87(2)(b) were sitting in the police van, complaining about being arrested, PO Cruz asked them how they would like to be pepper sprayed. § 87(2)(b) said, “This is totally messed up.” PO Cruz pepper sprayed them (encl. 10-18a). § 87(2)(b) testified that prior to pepper spraying them, PO Cruz said, “I don’t have to listen to this shit. Shut the fuck up.” She then pepper sprayed them (encl. 19-24).



PO Cruz said that when § 87(2)(b) and § 87(2)(b) were seated in the van and PO Cruz was standing on the passenger side of the van, § 87(2)(b) or § 87(2)(b) repeatedly kicked the door. She told him to stop kicking, but they did not stop. PO Cruz did not know if they would kick the door open and escape. Additionally, it would not have been safe for the officers to drive while someone was kicking the door. To make the men stop kicking, she aimed the pepper spray at the person closest to the door and sprayed. It struck § 87(2)(b) and § 87(2)(b) (encl. 33-40c).

PO Madden said that as he sat in the driver seat of the van, he heard a bang against the van. He turned around and saw § 87(2)(b) or § 87(2)(b) attempting to kick the van door. This person was told to stop. PO Cruz, who was standing outside of the van on the passenger side, reached through the open window and pepper sprayed § 87(2)(b) and § 87(2)(b) (encl. 41-47).

An officer is justified in the use of pepper spray when he or she reasonably believes that it is necessary to protect him or herself from the unlawful use of force. Pepper spray may be used when physical presence and/or verbal commands have not been, or would not be effective in overcoming physical resistance. Patrol Guide Procedure 212-95 (encl. E-H). DCT Case No. 75124/99, signed 12/21/00, the use of pepper spray is not permitted solely because an arrestee is kicking and screaming. DCT found the officer in this case guilty, finding that the use of pepper spray was not justified under Interim Order Number 9 (encl. Z2).

§ 87(2)(g)  
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Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
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Supervisor: \_\_\_\_\_  
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